

**MINUTES OF THE PUBLIC MEETING OF THE
ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY
September 11, 2004**

BOARD MEMBERS PRESENT: President Martin Reiss, D.O.; Vice-President Stanley Grossman; Stanley Brysacz, Jr., D.O.; Murray Cohen, D.O.; David Steinway, D.O.; Charlie Hendrix; F. P. Wedel, D.O.

BOARD MEMBERS ABSENT: Dr. Steinway, Ms. Hendrix, and Dr. Brysacz left the meeting prior to adjournment.

STAFF / OTHERS PRESENT: Elaine LeTarte, Executive Director
Barbara Meyers, Deputy Director
Blair Driggs, Assistant Attorney General
Carole A. Whipple, Griffin & Associates (Court Reporter)

I. CALL TO ORDER

The Board President, Dr. Martin Reiss, called the meeting to order at 8:10 a.m.

II. ROLL CALL

The Executive Director took the roll. All Board Members were present, establishing quorum for the meeting. The staff and others listed above were also present.

The Executive Director reviewed the changes made between the draft agenda distributed to the Board on September 2, 2004 and the final agenda.

III. PRESIDENT'S REPORT

Dr. Reiss welcomed the 3rd year medical students from Arizona College of Osteopathic Medicine at Midwestern University. After the conclusion of the Investigative Hearings, applicant interviews, and some of the Case Reviews, the Board held a question and answer session with the medical students. The students were dismissed at approximately 4:15 p.m.

Dr. Cohen moved that the Board go into Executive Session to obtain legal advice on the matters under Section VII of the agenda. Mr. Grossman seconded. The motion passed, 7-0, and the Board went into Executive Session at 8:15 a.m.

The Board returned to Open Session at 8: 50 a.m.

IV. REVIEW, CONSIDERATION AND APPROVAL OF MINUTES

- A. July 31, 2004 meeting, open session
- B. July 31, 2004, executive session

Mr. Grossman moved that the minutes of the open and executive sessions of the July 31, 2004 Board meeting be approved. Dr. Steinway seconded. The motion passed, 7-0.

V. CALL TO THE PUBLIC

Dr. Reiss explained to those present the Board's custom to ask members of the public to speak when the agenda item of interest to the person is called. He reminded people wishing to speak that they should fill out a speaker form and give it to a staff member.

VI. REVIEW, DISCUSSION, AND ACTION ON CASES MOVED TO FORMAL ADMINISTRATIVE HEARING, PURSUANT TO A.R.S. § 32-1855 (E).

A. Duane Darnell, D.O. Case No. 3240 License No. 2311

Dr. Darnell was present, and with Asst. Attorney General Blair Driggs, proposed a Consent Agreement to the Board in lieu of conducting the hearing. The Consent Agreement placed Dr. Darnell's license on probation with terms for monitoring in California and Arizona. Dr. Steinway moved to accept the agreement. Mr. Grossman seconded. The motion passed, 7-0.

B. Elliott Turetzky, D.O. Case No. 3313 License No. 1167

The Board conducted a formal administrative hearing in this matter. Dr. Turetzky did not appear, nor was he represented by an attorney. Based on the evidence presented and the testimony of the State's witness, Dr. Cohen moved that the Board adopt the Findings of Fact and Conclusions of Law as presented in the Complaint and Notice of Hearing, and that the Board order Dr. Turetzky's license be revoked. Mr. Grossman seconded. The motion passed, 5-0. [The hearing was held out of the order of the agenda, in the afternoon. By that time, Dr. Steinway and Ms. Hendrix had left the meeting.]

C. Randy E. Collins, D.O. Case No. 3325 License No. 1546

The Executive Director informed the Board that Dr. Collins' attorney had notified her yesterday that Dr. Collins was not able to attend the meeting today.

VII. REVIEW, DISCUSSION, AND ACTION ON REQUEST REHEARING OR REVIEW OF DECISION PURSUANT TO A.A.C. R4-22-106, OR REQUEST FOR HEARING ON APPEALABLE AGENCY ACTION PURSUANT TO ARS § 41-1092.03 (C)

A. Gregory Ebner, D.O. Case No. _____ Applicant No. ____

Dr. Ebner was not present nor was he represented by an attorney before the Board. Dr. Steinway moved that the Board deny Dr. Ebner's request for good cause, as the reason given for failing to request a hearing in a timely fashion was not material. Ms. Hendrix seconded. A roll call vote was taken. Dr. Steinway, Ms. Hendrix, Dr. Brysacz, Dr. Cohen, Dr. Wedel, Mr. Grossman, and Dr. Reiss voted in favor of the motion. No one voted against. The motion to deny passed, 7-0.

B. Henry Tomlinson, D.O. Case No. 3189 License No. 2639

Dr. Cohen moved that this matter be tabled to another meeting. Mr. Grossman seconded. The motion passed, 6-0.

VII. REVIEW, DISCUSSION AND ACTION ON INVESTIGATIVE HEARINGS PURSUANT TO A.R.S. § 32-1855 (E)

A. David Hatfield, D.O. Case No. 3248 License No. 2913

Dr. Hatfield was present, and sworn in by the court reporter. The Deputy Director read the case summary into the record. Dr. Hatfield discussed his communication with the patient to the Board, and responded to their questions. The complainant, M.G., was present and sworn in by the court reporter. M.G. discussed her perspective on the communication with the Board. After further discussion with Dr. Hatfield, Dr. Brysacz moved to dismiss the complaint. Dr. Steinway seconded. A roll call vote was taken. Dr. Brysacz, Dr. Steinway, Dr. Wedel, Dr. Cohen, Ms. Hendrix, Mr. Grossman, and Dr. Reiss voted in favor of the motion. No one voted against it. The motion passed, 7-0.

B. Heidi Haight-Biehler, D.O. Case No. 3004M License No. 1778
Dr. Haight-Biehler was present, and sworn in by the court reporter. The Deputy Director read the case summary into the record. Dr. Haight-Biehler discussed her care of the patient with the Board, and responded to their questions. Dr. Brysacz moved that a Letter of Concern be issued to Dr. Haight-Biehler, based on her failure to take into proper consideration hematological implications in this case, and that Dr. Haight-Biehler be required to complete a 20-hour course in this area. Mr. Grossman seconded. The motion passed, 6-0. Dr. Wedel recused himself from this case.

C. Phyllis Popp, D.O. Case No. 3239M License No. 2654
The Board postponed action until staff could determine why Dr. Popp did not attend the meeting.

D. Paul Geimer, D.O. Case No. 3246 License No. 1509
Dr. Geimer was present, and sworn in by the court reporter. The Deputy Director read the case summary into the record. Dr. Geimer discussed his perspective on his practice name, presented additional documents to the Board, and responded to the Board's questions. The complainant, P.F., was present and sworn in by the court reporter. P.F. explained his perspective to the Board, and responded to their questions. Dr. Steinway moved that the complaint be dismissed, contingent on Dr. Geimer changing the name of his practice. Dr. Brysacz seconded. After discussion, the motion and second were withdrawn. Dr. Steinway moved that the complaint be tabled to allow Dr. Geimer time to change the practice name. After discussion, that motion was also withdrawn.

Dr. Wedel moved that the Board issue a Letter of Concern to Dr. Geimer, based on the concern that inclusion of the term "psychological" in the name of his practice created an opportunity for confusion. Ms. Hendrix seconded.

Dr. Steinway then moved to table the matter. The motion to table passed, 6-1.

The Board then recessed at 10:30 a.m., and returned at 10:45 a.m.

E. James Cerneka, D.O. Case No. 3252 License No. 3664
Prior to the meeting, Dr. Cerneka had asked for and received a continuance of this case until the Board's October 23, 2004 meeting.

F. Philo Rogers, D.O. Case No. 3257M License No. 2809
Dr. Rogers was present, and sworn in by the court reporter. The Deputy Director read the case summary into the record. Dr. Rogers discussed his care of this patient and the subsequent malpractice claim with the Board, and answered their questions. Dr. Steinway moved that Dr. Rogers' license be censured, as the facts presented in the case materials and testimony showed that Dr. Roger's conduct was in violation of A.R.S. § 32-1854 (21) "Failing or refusing to maintain adequate records on a

patient” and (36) “Lack of or inappropriate direction, collaboration or supervision of a licensed, certified or registered health care provider or office personnel employed by or assigned to the physician in the medical care of patients”. Mr. Grossman seconded. After discussion, Dr. Steinway corrected the motion, to state that the conduct violated A.R.S. § 32-1854(6) “Engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard,” and (40) “Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.”, those being the alleged violations of which Dr. Rogers had been noticed, and included that staff would be directed to prepare the final order for the Board’s review. A roll call vote was taken. Dr. Steinway, Mr. Grossman, Dr. Wedel, Dr. Cohen, and Ms. Hendrix voted in favor of the motion. Dr. Brysacz and Dr. Reiss voted against the motion. The motion passed, 5-2.

G. Robert Michaud, D.O. Case No. 3291 License No. 2045
Dr. Michaud was present. The Deputy Director read the case summary into the record. Dr. Michaud was sworn in by the court reporter, then discussed the incident in Montana with the Board and responded to their questions. Dr. Steinway moved to dismiss the complaint, noting that the actions taken by the Montana Board were appropriate but the AZ Board did not need to take any further action. Dr. Brysacz seconded. The motion passed, 7-0.

H. Bruce Badagliacqua, D.O. Case No. 3255 License No. 2272
Dr. Badagliacqua was present and sworn in by the court reporter. The Deputy Director read the case summary into the record. Dr. Badagliacqua discussed his writing of prescriptions for a family member with the Board, and responded to the Board’s questions. Dr. Cohen moved that the Board issue a Letter of Concern, based on the Board’s concern that Dr. Badagliacqua prescribed a controlled substance to a family member. Dr. Wedel seconded. A roll call vote was taken. Dr. Cohen, Dr. Wedel, Dr. Brysacz, and Dr. Reiss voted in favor of the motion. Dr. Steinway, Ms. Hendrix, and Mr. Grossman voted against it. The motion passed, 4-3.

Dr. Steinway, who was on call, left the meeting at 12:40 p.m. to care for emergency patients.

I. Frank Ryan, D.O. Case No. 3294 License No. 3578
Dr. Ryan was present, and sworn in by the court reporter. The Deputy Director read the case summary into the record. Dr. Ryan discussed his advertisements and notices regarding cost of service with the Board, presented an additional document to the Board, and responded to their questions. Mr. Grossman moved that the case be dismissed. Dr. Brysacz seconded. The motion passed, 6-0.

VIII. REVIEW, CONSIDERATION AND ACTION ON COMPLIANCE WITH TERMS OF BOARD ORDERS AND REQUESTS TO MODIFY OR TERMINATE ORDERS, PURSUANT TO A.R.S. 32-1855.

A. Philo Rogers, D.O. Cases # 2983, 2496, 2400, & 2349 License No. 2809
Dr. Rogers was present. The Executive Director presented Dr. Rogers’ progress to date in complying with the terms of his probation, specifically the results of chart reviews. Dr. Rogers requested that the Board terminate his probation at this time. Mr. Grossman moved that the Board deny the request for early termination. Dr. Steinway seconded. The motion to deny passed, 7-0.

B. Lynne Pirie, D.O. Case No. 2758 License No. 1878

Dr. Pirie was not present. The Executive Director presented Dr. Pirie's progress to date in complying with the terms of her probation. Specifically, staff has not received from Dr. Pirie any documentation that she has completed the required continuing medical education hours.

Dr. Wedel moved that a complaint alleging non-compliance be opened against Dr. Pirie, and that her probation not be terminated as scheduled on Sept 30, 2004. Dr. Brysacz seconded. The motion passed, 5-0.

C. Harold Reeder, D.O. Case No. 3044 License No. 2001
Dr. Reeder was present. The Executive Director summarized Dr. Reeder's compliance with the terms of his probation, specifically the results of chart reviews. The Board agreed that Dr. Reeder's probation should terminate as scheduled, on September 30, 2004.

The Board recessed for lunch between 1: 15 p.m., and 1: 45 p.m. Ms. Hendrix did not return to the meeting after lunch.

IX. REVIEW, CONSIDERATION, AND ACTION ON APPLICATIONS FOR LICENSURE PURSUANT TO A.R.S. §32-1822 (B); PERMITS PURSUANT TO § A.R.S. 32-1829; AND RENEWALS OF LICENSES PURSUANT TO A.R.S. §32-1825 (C-D) AND A.A.C. R4-22-109.

A Keith Snow, D.O. initial license Applicant No. 0049
Dr. Snow was present, and sworn in by the court reporter. The Executive Director read into the record the issues concerning his application for licensure. Dr. Snow discussed these issues with the Board, and responded to their questions. Dr. Wedel moved that Dr. Snow be approved for licensure. Dr. Brysacz seconded. The motion passed, 5-0.

B. Bryn Henderson, D.O. initial license Applicant No. 0136
The Executive Director informed the Board that the issues concerning Dr. Henderson's license had been resolved prior to the meeting, and she had approved his licensure.

C. Robert McCabe, D.O. initial license Applicant No. 0139
Dr. McCabe was present, and represented by an attorney. Dr. McCabe was sworn in by the court reporter. The Executive Director read into the record the issues concerning his application for licensure. Dr. McCabe discussed these issues with the Board, presented additional documentation, and responded to the Board's questions. Dr. Wedel moved that Dr. McCabe be approved for licensure. Dr. Brysacz seconded. The motion passed, 5-0.

X. REVIEW, DISCUSSION, AND ACTION ON CASE REVIEWS OF ALLEGATIONS OF UNPROFESSIONAL CONDUCT A.R.S. § 32-1855 (C through F).

A. Jeffrey Gitt, D.O. Case No. 3183M License No. 2023
Based on the case materials and the recommendations of the reviewers, Dr. Brysacz moved that this complaint be dismissed. Dr. Wedel seconded. The motion passed, 5-0.

B. Robert Bell, D.O. Case No. 3116 License No. 3118

Based on the case materials and the recommendations of the reviewers, Dr. Cohen moved that an Investigative Hearing be conducted on this complaint. Dr. Wedel seconded. The Deputy Director informed the Board that there might be a delay in conducting the hearing as Dr. Bell has been called overseas on military assignment.

C. Darrell Bunch, D.O. Case No. 3258 License No. 1330

Based on the case materials and the recommendations of the reviewers, Dr. Cohen moved that an Investigative Hearing be conducted on this complaint. Mr. Grossman seconded. The motion passed, 5-0.

D. Alvin Wong, D.O. Case No. 3302 License No. 3214

Based on the case materials and the recommendations of the reviewers, Dr. Cohen moved that an Investigative Hearing be conducted on this complaint. Dr. Wedel seconded. The motion passed, 5-0.

E. Judy Pinsonneault, D.O. Case No. 3229 License No. 2762

Dr. Pinsonneault was present. Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved to dismiss the complaint. Mr. Grossman seconded. The motion passed, 5-0.

F. Thomas Kotoske, D.O. Case No. 3234 License No. 3065

Dr. Kotoske was present, and made a statement to the Board, and responded to the Board's questions. Based on the case materials, recommendations of the reviewers, and the discussion with Dr. Kotoske, Dr. Wedel moved that the complaint be dismissed. Dr. Reiss seconded. The motion passed, 5-0.

G. Thomas Fiel, D.O. Case No. 3368 License No. 2665

Based on the case materials and the recommendations of the reviewers, Dr. Cohen moved that an Investigative Hearing be conducted on this complaint. Dr. Wedel seconded. The motion passed, 5-0.

H. James Beach, D.O. Case No. 3242 License No. 1438

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that this complaint be dismissed. Dr. Brysacz seconded. The motion passed, 5-0.

I. David Berkenbile, D.O. Case No. 3256 License No. 3252

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that this complaint be dismissed. Dr. Brysacz seconded. The motion passed, 5-0.

J. L. Stan Naramore, D.O. Case No. 3201 License No. 3859

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that an Investigative Hearing be conducted on this complaint. Dr. Cohen seconded. The motion passed, 5-0.

K. Kenneth Snow, D.O. Case No. 3289 License No. 2072

Dr. Wedel recused himself from this case, then presented additional information on this case. Based on the case materials, Dr. Wedel's information, and the recommendations of the reviewers, Mr. Grossman moved that this complaint be dismissed. Dr. Cohen seconded. The motion passed, 4-0.

L. Chi Duong, D.O. Case No. 3303 License No. 3424

Based on the case materials and the recommendations of the reviewers, Dr. Cohen moved that this complaint be dismissed. Mr. Grossman seconded. The motion passed, 5-0.

M. Kent Hatfield, D.O. Case No. 3295 License No. 2754

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that this complaint be dismissed. Dr. Cohen seconded. The motion passed, 5-0.

N. Bruce Sand, D.O. Case No. 3213 License No. 1841

Dr. Brysacz recused himself from this case. Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that this complaint be dismissed. Dr. Cohen seconded. The motion passed, 4-0.

O. William Elliott, D.O. Case No. 3226M License No. 3390

Based on the case materials and the recommendations of the reviewers, Mr. Grossman moved that an Investigate Hearing be conducted on this complaint. Dr. Wedel seconded. The motion passed, 5-0.

Dr. Brysacz left the meeting at 4:20 p.m. to perform in the Arizona Masterwork Chorale's 9-11 Memorial program.

P. Jason Frye, D.O. Case No. 2954A License No. 3495

Q. Eric Shreder, D.O. Case No. 2954B License No. 3456

The Executive Director presented a verbal summary of the complaint and the results of the investigation to date. Based on the information provided and the age of the case, Dr. Cohen moved to dismiss the complaint. Mr. Grossman seconded. The motion passed, 4-0.

R. Nicholas Williams, D.O. Case No. 3349 License No. 2853

The complainant, R.C. was present and discussed his concerns with the Board. Based on the case materials, the recommendations of reviewers and R.C.'s presentation, Dr. Brysacz moved to dismiss the complaint. Dr. Wedel seconded. The motion passed, 5-0. [This case was heard out of the order of the agenda, prior to Dr. Brysacz leaving the meeting.]

S. Bart Eng, D.O. Case No. 3187M License No. 1776

Based on the case materials and the recommendations of the reviewers, Dr. Wedel moved that an Investigate Hearing be conducted on this complaint. Mr. Grossman seconded. The motion passed, 4-0.

T. Paul Blackburn, D.O. Case No. 3363 License No. 2680

The Executive Director informed the Board that Dr. Blackburn had documented sufficient CME to meet the renewal requirement. Based on that information, Dr. Wedel moved that the complaint be dismissed. Mr. Grossman seconded. The motion passed, 4-0.

XII. REVIEW, DISCUSSION, AND ACTION ON PROPOSED LEGISLATION FOR UPCOMING SESSION, PURSUANT TO ARS § 32-1803(B)(13).

A. Consideration legislation for upcoming session (2005)

B. Budget Request for FY06 & 07

The Board did not discuss these agenda items.

XIII. REVIEW, DISCUSSION, AND ACTION ON RULEMAKING, PURSUANT TO ARS § 32-1803(C)(1) AND (A)(10), AND SUBSTANTIVE POLICY STATEMENTS, PURSUANT TO ARS § 41-1091

- A. Packet FY04-01: Licensing and Timeframes
- B. Packet FY05-01: Fees

The Board did not discuss these agenda items

XIV. REVIEW, CONSIDERATION, AND ACTION ON EXECUTIVE DIRECTOR'S REPORT.

- A. Performance Measures Report
- B. Financial Report
- C. List of Meetings, Presentations, and Articles

The Board did not discuss these agenda items

XV. REVIEW, CONSIDERATION, AND ACTION ON LITIGATION AGAINST THE BOARD.

- A. Taylor v. AZ Board of Osteopathic Examiners / LC2003-000983

Dr. Wedel moved that the Board go into Executive Session to obtain legal advice about pending litigation against the Board. Mr. Grossman seconded. The motion passed, 4-0 and the Board went into Executive Session at 4:20 p.m.

The Board returned to Open Session at 4:30 p.m. Mr. Grossman moved that the Board empower Mr. Driggs to negotiate a resolution of this case. Dr. Wedel seconded. The motion passed, 4-0.

XVI. ADJOURNMENT

Mr. Grossman moved that the meeting be adjourned. Hearing no objection, Dr. Reiss adjourned the meeting at 4:35 p.m.

Drafted: September 13, 2004
Approved: October 23, 2004